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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE COW PALACE, LTD.,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 77-28

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$500.00 civil penalty for the discharge of slurried cow manure allegedly in violation of RCW 90.48.144, came on for hearing before the Pollution Control Hearings Board, all members present, convened at Lacey, Washington on October 10, 1977. Hearings Board Chairman W. A. Gissberg presided. Respondent elected a formal hearing.

Appellant appeared by its representative Bill Dolsen. Respondent appeared by and through its attorney, Charles W. Lean, Assistant Attorney General. Olympia court reporter Jennifer Roland recorded the proceeding.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant owns and operates a dairy farm of about 1,200 acres near
7 Granger, Washington. The milking areas are washed down with water which
8 mixes with manure to form a slurry.

9 On September 9, 1975, respondent, Department of Ecology, issued to
10 appellant a "National Pollutant Discharge Elimination System" (NPDES)
11 permit requiring disposal of manure slurry via sprinkling onto open
12 fields. This was to be accomplished by directing the slurry into two
13 holding lagoons and then through an aluminum irrigation pipe leading
14 out of the lagoons and across open fields. This pipe, as built,
15 terminates at a drain (open ditch) leading to the Yakima River. In
16 normal use, the irrigation pipe does not discharge slurry into the
17 drain leading to the river.

18 While slurry sprinkled onto open fields serves to irrigate during
19 growing season, the sprinkling takes place year around for the purpose
20 of slurry disposal.

21 II

22 Section S1 of appellant's NPDES permit contains the following
23 language:

24 S1. EFFLUENT LIMITATIONS

25 Beginning on the date of issuance of this permit the
26 Permittee is authorized to discharge only in
accordance with the following conditions:

27 FINAL FINDINGS OF FACT,
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1. Feedlot drainage may only be discharged whenever rainfall events, either chronic or catastrophic, cause an overflow of waste water from a facility designed, constructed and operated to contain all waste waters plus the runoff from 1.6 inches of precipitation occurring in any 24-hour period which is equivalent to the precipitation from a 25-year, 24-hour precipitation event.

Section G4 of appellant's NPDES permit requires that in the event the appellant cannot comply with any permit condition due to breakdown, appellant must:

Immediately notify the Department [of Ecology] by telephone so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.

III

On December 29, 1976, the respondent, Department of Ecology, received a citizen complaint that the water had turned green in the drain which flows by the end of appellant's slurry irrigation pipe. Respondent's investigation showed, as appellant admits and we find, that manure slurry was discharged from appellant's pipe into the drain and down into the Yakima River. The slurry was green, foamy and odiferous as it discharged from the pipe. The discharge occurred because the pipe-end had ruptured, due to freezing weather, while appellant was operating the irrigation system. No attempt was made to close the valve at the lagoon. Such action would have stopped the flow of the discharge into the irrigation pipe and greatly reduced the quantity which reached the drain and the river.

Respondent's inspector informed the dairy manager of the discharge,

FINAL FINDINGS OF FACT,
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1 although by that time the dairy manager was already aware of it. The
2 dairy manager was completely unfamiliar with the existence and contents
3 of the dairy's NPDES permit. For that reason, no attempt had been made
4 to notify respondent of the discharge. Approximately 720,000 gallons of
5 manure slurry were discharged into the drain and into the Yakima River.
6 A "Notice of Penalty Incurred and Due" No. 77-109, assessing a \$500 civil
7 penalty, was served upon appellant.

8 IV

9 Appellant has previously incurred and paid a \$250 civil penalty
10 for an earlier violation of its NPDES permit.

11 V

12 Any Conclusion of Law hereinafter recited which should be deemed
13 to be a Finding of Fact is hereby adopted as such.

14 From these Findings, the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS OF LAW

17 I

18 The civil penalty in this appeal is assessed for violation of
19 RCW 90.48.144 which states, in pertinent part:

20 Every person who:

21 (1) Violates the terms or conditions of a waste discharge
22 permit issued pursuant to RCW 90.48.180 or this amendatory
23 act, or

24 (3) . . . shall incur . . . a penalty in an amount of up to
25 five thousand dollars a day for every such violation. Each
26 and every such violation shall be a separate and distinct
27 offense

28 By the phrase "this amendatory act," the Legislature has included within
29 this provision, violations of an NPDES permit issued pursuant to

30 FINAL FINDINGS OF FACT,
31 CONCLUSIONS OF LAW AND ORDER

1 RCW 90.48.260 and the Federal Water Pollution Control Act, PL 92-500. A
2 penalty may be assessed under this provision without regard to the fault
3 of the violator.

4 II

5 While the unlawful discharge of these pollutants was initially
6 caused by a frozen pipe, appellant's employee should have taken
7 corrective action by closing the valve at the lagoon, thus eliminating
8 much of the flow of manure slurry at the point of discharge from the
9 broken pipe. By discharging manure slurry into a drain which flows into
10 the Yakima River, appellant has violated section S1 of its NPDES permit.
11 That section prohibits any such discharge under the circumstances of
12 this appeal.

3 By making no attempt to notify the Department of Ecology of its
14 discharge of manure slurry, appellant has also violated section G4 of its
15 NPDES permit. That section requires immediate telephone notice to the
16 Department when appellant cannot comply with the terms of its permit,
17 due to breakdown.

18 Having failed to carry out the terms of its NPDES permit, appellant
19 has violated RCW 90.48.144 and is subject to civil penalty under that
20 statute.

21 III

22 Although appellant's dairy manager was unfamiliar with the dairy's
23 NPDES permit, it is the corporate entity to whom the permit is issued.
24 Unfamiliarity on the part of one employee--even a key employee--is no
25 defense or justification when the permit is violated.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

IV

Considering the quantity of manure slurry discharged and the fact that appellant's employees failed to take reasonable caution after discovering the broken pipe, and in view of appellant's prior violation of the same NPDES permit, the \$500.00 civil penalty assessed by respondent is reasonable.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board makes this

ORDER

The \$500.00 civil penalty, imposed by Notice No. 77-109, is hereby affirmed.

DONE at Lacey, Washington, this 14th day of October, 1977.

POLLUTION CONTROL HEARINGS BOARD


W. A. GISSBERG, Chairman


DAVE J. MOONEY, Member

CHRIS SMITH, Member